

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HANNAH R. SCROGGINS,

No. C 12-2615 SI

Plaintiff,

**ORDER GRANTING MYLAN
DEFENDANTS' MOTION TO STAY
PROCEEDINGS PENDING A DECISION
ON TRANSFER BY THE JUDICIAL
PANEL ON MULTIDISTRICT
LITIGATION**

v.

HOFFMAN-LA ROCHE, INC., *et al.*,

Defendants.

Several motions are scheduled for a hearing on July 20, 2012. Pursuant to Civil Local Rule 7-1(b), the Court determines that the matters are appropriate for resolution without oral argument, and VACATES the hearing. For the reasons set forth below, the Court GRANTS defendants' motion to stay all proceedings in this case pending a final decision on transfer by the Judicial Panel on Multidistrict Litigation. In the event Panel does not transfer this action, the Court will rule on plaintiff's motion for remand.

DISCUSSION

This case is one of many involving the pharmaceutical drug Accutane®, or generic versions thereof, currently pending in federal court. Plaintiff originally filed this case in the Superior Court for the County of San Francisco against numerous defendants. The complaint seeks damages allegedly resulting from plaintiff's use of generic versions of Accutane®. Plaintiff sued the drug manufacturers, as well as McKesson Corporation, the distributor of the drug. On May 21, 2012, the Mylan defendants

1 removed the action to this Court on the basis of diversity jurisdiction. The Notice of Removal asserts
2 that McKesson was fraudulently joined because plaintiff's state law claims against McKesson are
3 preempted under *PLIVA, Inc. v. Mensing*, 131 S. Ct. 2567 (2011).

4 On May 25, 2012, the Judicial Panel on Multidistrict Litigation issued a Conditional Transfer
5 Order conditionally transferring this case to the Accutane MDL proceeding pending before Judge James
6 S. Moody, Jr. in the Middle District of Florida, *In re Accutane (Isotretinoin) Products Liab. Litig.*, MDL
7 No. 1626. *See* Defs' Motion to Stay, Ex. A. Plaintiff has filed a notice of opposition to the conditional
8 transfer order, and that matter will be addressed by the Panel during its session on July 26, 2012.
9 Presently before this Court are the Mylan defendants' motion to stay the action pending its transfer to
10 the MDL proceeding and plaintiff's motion for remand to state court.

11 The Court's power to stay proceedings is "incidental to the power inherent in every court to
12 control the disposition of the causes on its docket with economy of time and effort for itself, for counsel,
13 and for litigants." *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). The Court finds that a stay
14 is in the interest of judicial economy and consistency because the identical jurisdictional issue – whether
15 state law claims against McKesson are preempted by *Mensing*, and thus whether removal was proper
16 – is pending before Judge Hamilton in *Couture v. Hoffman-La Roche, Inc., et al.*, Case No. 12-2657
17 PJH. The JPML has issued a conditional transfer order conditionally transferring the *Couture* case to
18 the *Accutane* MDL.¹ If both cases are transferred to Judge Moody, Judge Moody can address the
19 preemption issue in a uniform manner. While it is unclear from the record before the Court whether
20 Judge Moody has considered the precise issue presented by plaintiff's motion to remand, Judge Moody
21 has previously dismissed state law claims against other defendants as preempted under *Mensing*. *See*
22 *In re Accutane Products Liability*, MDL No. 1626-IBD, No. 8:04-MD-2523-T-30TBM,
23 8:10-CV-987-T-30TBM (Plevniak), 2011 WL 6224546, (M.D. Fla. Nov. 9, 2011).

24 Accordingly, for the foregoing reasons, the Court GRANTS defendants' motion to stay this
25

26 ¹ The defendants have moved to stay *Couture* pending a decision by the JPML regarding
27 transfer, and the plaintiff has moved to remand the case. Judge Hamilton issued an order stating that
28 she will consider the motion to stay prior to considering the motion to remand, and that if she grants the
stay she will defer ruling on the motion to remand until after the JPML has decided whether it will
transfer the case. *See* Docket No. 28 in C 12-2657 PJH

1 action, Docket No. 10, and DEFERS ruling on plaintiff's motion for remand. Docket No. 11.

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3 **IT IS SO ORDERED.**

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5 Dated: July 16, 2012



SUSAN ILLSTON
United States District Judge